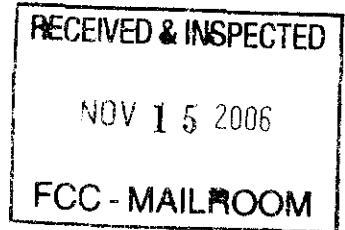


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled)	WC Docket No. 05-196
Service Providers)	
)	
Hawk Communications, LLC)	
d/b/a JoiPhone)	
)	
Petition for Limited Waiver)	

PETITION FOR LIMITED WAIVER

Petitioner Hawk Communications, LLC, a Georgia limited liability company d/b/a JoiPhone ("JoiPhone"), pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules,¹ hereby respectfully files this Petition ("Petition") requesting a limited waiver extending the time for JoiPhone to comply with certain requirements of Commission rule 9.5(b) that were adopted in the above captioned proceedings.²

As explained in detail below, JoiPhone believes its VOIP services comply with the Commission's E911 Rules. However, for reasons outside its control, E911 facilities supplied by JoiPhone's underlying supplier (described below) are currently unavailable on a nationwide basis. Furthermore, while JoiPhone does not accept new subscribers in

¹ 47 C.F.R. § 1.3.

² IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 and 05-196, FCC 05-116 (rel. June 3, 2005) ("VOIP E911 Order"). See also, Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters, WC Docket Nos. 04-36 and 05-196, DA 05-2945 (rel. November 7, 2005) ("Public Notice"). See, 47 C.F.R. Part 9 ("E911 Rules"). JoiPhone specifically seeks a waiver of selective parts of FCC rules 9.5(b) and (f), 47 C.F.R. §§ 9.5(b) and (f).

W. O. G. P. 05-196-0000 024
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areas where 911 service is not available during the sign-up process, this may not necessarily prevent subscribers from using JoiPhone's VOIP services in those areas since the services are "nomadic". Consequently, to the extent the Commission deems necessary, JoiPhone seeks a limited waiver of certain E911 Rules. Furthermore, JoiPhone is a new company and therefore could not have met the compliance plan filing requirements of the VOIP E911 Order by the November 28, 2005 deadline set forth in Commission rule 9.5(f). JoiPhone has filed such a compliance plan (discussed below) concurrently with this waiver request. Accordingly, if deemed necessary by the Commission, JoiPhone also requests a waiver of the November 28, 2005 deadline.

I. DESCRIPTION OF THE PETITIONER'S SERVICE AND E911 SOLUTION

A. Service Description.

JoiPhone is a provider of interconnected VOIP services ("Services") within the meaning of the Commission's E911 Rules. Headquartered in Delray Beach, Florida, JoiPhone is a new entrant into the VOIP marketplace, seeking to provide subscribers with VOIP services (e.g., computer-to-computer, computer-to-phone, phone-to-phone). JoiPhone provides its subscribers with a VOIP interface (adapter) that they attach to their broadband (e.g., cable, digital subscriber line) connection. Alternatively, JoiPhone also offers subscribers a SoftPhone product using a downloadable program in lieu of an adapter. The Services can be used "nomadically" (i.e., subscribers can move this adapter or (download the SoftPhone software) from one location to another). JoiPhone requires subscribers to obtain their own broadband facilities. JoiPhone does not provide these facilities. Moreover, JoiPhone delivers VOIP calls through underlying switching and transport facilities purchased (through JoiPhone's wholesale provider, Hawk VOIP, LLC)³ from underlying carriers and other facilities providers. JoiPhone offers Services to subscribers on a nationwide basis.

³ Hawk VOIP, LLC, a Florida LLC, enters into wholesale agreements with telecommunications and other facilities providers for services and facilities that it in turn makes available to JoiPhone. JoiPhone resells Hawk VOIP, LLC's products and services. Hawk VOIP, LLC does not provide service to retail subscribers.

B. JoiPhone's Compliance with E911 Rules.

1. The Intrado Agreement and JoiPhone's E911 Solution.

As described in JoiPhone's Compliance Letter filed with the Commission,⁴ JoiPhone has entered into an agreement with Intrado Inc. ("Intrado") for implementation of an E911 solution for the Services. JoiPhone's agreement with Intrado (together with Intrado's "Compliance Package"⁵ related thereto) is expressly intended to enable JoiPhone to comply with the Commission's E911 Rules. Where Intrado offers its E911 services, JoiPhone believes its Services are compliant with the E911 Rules.

In that regard, Intrado has deployed its E911 solution over a substantial – but not the entire – portion of the country.⁶ However, Intrado is subject to the same limitations and hurdles faced by others seeking to provide ubiquitous VOIP 911 capability. That is, while many public safety answering points ("PSAPs") are capable of processing caller location information (*i.e.*, E911 capable), some PSAPs – even some of those located near E911 capable PSAPs – are not. For emergency calls to PSAPs that are not capable of receiving automatic location identification ("ALI"), Intrado will send only the subscriber's telephone number. In the event for whatever reason, the subscriber's call identification information is invalid or does not match their registration information, Intrado will send the call to a National Emergency Call Center ("NECC"). The NECC will attempt to resolve the subscriber's location information, either through contact with the subscriber or with JoiPhone.

Intrado has advised JoiPhone that as of October 10, 2006, Intrado was routing emergency calls to some 3,500 PSAPs and were projecting a total of some 4000 PSAPs by the end of 2006.⁷ Intrado's E911 systems are designed to permit

⁴ See, Compliance Letter of Hawk Communications, LLC d/b/a JoiPhone, WC Docket No. 05-196 ("Compliance Letter") (filed concurrently with this Petition).

⁵ *Id.* at Attachment A.

⁶ *Id.* at Attachment A. (Describing Intrado's major market rollout schedule and list of PSAPs where E911 coverage is available).

⁷ *Id.* The Major Market Rollout Schedule depicts Intrado's planned rollout of E911 services through 2006.

JoiPhone to access Intrado's database for subscriber address validation and to provide for more or less real-time delivery of new or updated subscriber address information.⁸ JoiPhone, through Intrado's E911 services, will endeavor to provide its subscribers with access to emergency services from any location in the country.⁹ Accordingly, and as more fully discussed below, JoiPhone respectfully requests a limited waiver and extension of time for compliance with the E911 Rules described hereunder until such time as Intrado has achieved such ubiquitous domestic E911 coverage.

2. Limitations.

As required by Commission rule 9.5(d) and further described below, each subscriber, as a condition precedent to receiving Services, must submit its Registered Location information to JoiPhone. Each subscriber has the capability to update this Registered Location information. However, whether subscribers that subsequently move their physical location do in fact update their Registered Location, again, is outside of JoiPhone's control. Furthermore, JoiPhone has no way to verify that the actual location of the subscriber from which the VOIP call is placed matches its Registered Location information.

For instance, if a subscriber moves its Service location (i.e., the adapter or software) but does not also update his or her Registered Location information with JoiPhone, Intrado will direct the PSAP to dispatch emergency vehicles to that subscriber's original address. If the subscriber does update its Registered Location information, emergency vehicles will be dispatched to the new location (until the Registered Location on file with JoiPhone is changed again). Subscribers attempting to change their Registered Location to an area where Intrado does not have 911 coverage will be so advised and warned that they should not use the JoiPhone Service in that location.

⁸ According to Intrado, they assume that the subscriber record submitted to Intrado pass geocoding and MSAG validations.

⁹ A detailed description of Intrado's E911 solution and E911 services is set forth in the Compliance Letter.

In sum, JoiPhone cannot know whether a subscriber is using the Services from its Registered Location.

3. JoiPhone's Efforts to Mitigate Effect of E911 Solution Limitations.

As discussed further below, JoiPhone does not accept new subscribers where Intrado's 911 solution is not available. Additionally, JoiPhone has taken substantial measures to mitigate the effects of E911 unavailability, including extensive disclosures and subscriber acknowledgements in JoiPhone's online Service activation ("sign-up") procedures.

First, before a new customer is able to subscribe to JoiPhone's Service he/she must agree and accept the terms and conditions of Service (including any limitations and disclaimers) provided on JoiPhone's Website located at <http://www.joiphone.com/termservice.htm> and acknowledge that they fully understand and agree to these terms prior to signing up for the Service.

Second, prior to signing up for the Service, subscribers must agree and accept the Service with the emergency 911 calling limitations. Subscribers must sign their initials and give their irrevocable consent permitting JoiPhone to printout and keep a copy of their consent and agreement and to disclose it to the Commission or other regulatory authorities as needed. Significantly, subscribers may not activate their Service without first providing JoiPhone with their Registered Location information and until their address has been verified and approved by Intrado. As indicated, subscribers also have the capability – and are advised as part of the sign-up process that they are required – to update the Registered Location information when their geographic location changes.¹⁰

All of the foregoing subscriber sign-up and notification requirements are fully consistent with the E911 Rules. Still, notwithstanding these precautions, it

¹⁰ This essentially satisfies the Commission's requirement that all VOIP providers secure acknowledgments from all of their subscribers that the latter understand the E911 limitations associated with their respective VOIP service offerings. See, Public Notice at Supra Note 2.

is physically impossible for JoiPhone to know, first, when or if a subscriber has changed the geographic location from whence it uses the Service and, second, whether or not such subscriber has updated the Registered Location after the change. Given its dependence upon Intrado's deployment schedule, JoiPhone cannot be certain whether such a migrant subscriber is using Services in an area where Intrado's E911 capabilities are currently available.

C. Impact of E911 Limitations on JoiPhone's Marketing Efforts.

The Commission has stated that it expects VOIP providers not to market their services in areas where full 911 coverage is not available.¹¹ As indicated herein and in its Compliance Letter, JoiPhone has made substantial efforts to establish full nationwide 911 capability. JoiPhone will not accept a subscriber who attempts to sign-up for Services from a location where Intrado has not implemented 911 coverage. However, for the reasons discussed above, inasmuch as the Services are nomadic, JoiPhone cannot control – or even know of – the location from which the subscriber subsequently uses the Services. Thus, the only way for JoiPhone to strictly comply with the requirement that it not market the Service until Intrado has established ubiquitous, domestic E911 coverage is to refrain from such marketing altogether.¹²

Accordingly and as more fully discussed below, JoiPhone respectfully submits that it substantially complies with the E911 Rules and that holding JoiPhone to a stricter, nationwide ubiquitous compliance standard is not in the public interest. Accordingly, to the extent the Commission deems necessary, JoiPhone seeks a limited waiver and extension of time for compliance with the E911 Rules described hereunder until such time as it has achieved such ubiquitous domestic E911 coverage.

¹¹ See, Public Notice at Supra Note 2.

¹² For example, in a metropolitan area served by multiple PSAPs some may have E911 capability while others may only provide Basic 911.

II. SPECIFIC WAIVERS REQUESTED

In pertinent part, Commission rule 9.5(b), certain portions of which are the subject of this limited waiver request, reads as follows:

- (b) E911 Service. As of November 28, 2005:
 - (1) Interconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;
 - (2) Interconnected VoIP service providers must transmit all 911 calls, as well as ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to Sec. 64.3001 of this chapter, provided that "all 911 calls" is defined as "any voice communication initiated by an interconnected VoIP user dialing 911;"
 - (3) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and
 - (4) The Registered Location must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database. 47 C.F.R. § 9.5(b).

As discussed, JoiPhone believes its Services are compliant with the E911 Rules inasmuch as it (i) complies therewith where E911 facilities are available and (ii) does not accept subscribers who attempt to sign-up for its Services where they are not. However, to the extent the Commission deems necessary and appropriate, JoiPhone specifically and respectfully requests a limited waiver of the following requirements of this rule until such time as JoiPhone has the capability to implement the same on a nationwide basis:

1. That it transmit all 911 calls, in all geographic regions served by the Wireline E911 Network, along with the ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority;¹³

2. That it route all 911 calls through the use of ANI and, if necessary, pseudo-ANI;¹⁴

3. That it provide the Registered Location to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information ("ALI") database;¹⁵

4. Furthermore, to the extent the Commission deems necessary, JoiPhone requests a limited waiver of Section 9.5(b)(1) of the Commission's rules to permit JoiPhone to market its VOIP Service and sign-up new subscribers during the time that the foregoing requested waiver of Sections 9.5(b)(2),(3) and (4) of the Commission's rules remain in effect;¹⁶ and

5. JoiPhone is a start up company. In fact, at the time of the Commission's VOIP E911 Order and the November 28, 2005 due date for E911 compliance plans, JoiPhone had not yet begun to provide VOIP services. Therefore, JoiPhone could not have met the Commission's compliance plan filing requirements by November 28, 2005. If deemed necessary by the Commission, JoiPhone also seeks a waiver of the November 28, 2005 compliance letter filing date, thus permitting JoiPhone to file its Compliance Letter as of the date hereof instead.¹⁷

¹³ 47 C.F.R. § 9.5(b)(2) (emphasis added).

¹⁴ 47 C.F.R. § 9.5(b)(3) (emphasis added).

¹⁵ 47 C.F.R. § 9.5(b)(4).

¹⁶ 47 C.F.R. § 9.5(d).

¹⁷ See 47 C.F.R. § 9.5(f). JoiPhone is a new entrant into the VOIP service market. As such, it was not yet in business on the date that VOIP service providers' E911 compliance plans were due, November 28, 2005. JoiPhone has now complied with this requirement through filing of the Compliance Letter. JoiPhone is thus unsure whether it should seek a waiver of that specific filing date requirement. However, in the event that the Commission deems such a waiver necessary, JoiPhone also submits a request for such a waiver in this Petition for all of the reasons stated herein.

III. STANDARDS OF REVIEW

Section 1.3 of the Commission's rules states that the Commission may waive its rules for good cause shown.¹⁸ Factors supporting this showing include circumstances where strict compliance is inconsistent with the public interest and when the relief requested will not undermine the Commission's policy objective of the rule for which waiver is sought.¹⁹ Specifically, the Commission has described this standard as follows:

The waiver process contemplates that in particular circumstances there may be public interest justification for granting relief to an entity from full application of a Commission policy or rule. As provided under our rules, a deviation from strict application of the Commission rules may be permitted for good cause shown. See 47 C.F.R. § 1.3. The Commission may grant a waiver where special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and the waiver is consistent with the principles underlying the rule.²⁰

The party may also seek a waiver by showing that application of the rule would be inequitable, unduly burdensome, or contrary to the public interest.²¹ Petitioner respectfully submits that it meets this standard for the following reasons.

IV. PETITIONER MEETS THE STANDARD FOR A LIMITED WAIVER

1. Legal Precedent Supports a "Hard Look" at JoiPhone's Limited Waiver Request.

Controlling precedent for reviewing waiver requests such as this one is found in WAIT Radio:

¹⁸ 47 C.F.R. § 1.3.

¹⁹ See, WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("WAIT Radio"); Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

²⁰ United States Telephone Association Petition for Waiver of Part 32 of the Commission's rules, Order, 13 FCC Rcd 214 (Com. Car. Bur. 1997) (citing Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990) ("Northeast Cellular"); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972) ("WAIT Radio")); See also, Aliant Communications Co. Petition for Waiver of Section 32.27 of the Commission's rules, Order on Reconsideration, DA 99-664, para. 6 (Com. Car. Bur. rel. Apr. 6, 1999).

²¹ WAIT Radio, 418 F. 2d at 1159. See also, 47 C.F.R. § 1.925(b)(3) (permitting waiver of Commission rules in wireless context under a similar showing).

[A] general rule deemed valid because its overall objectives are in the public interest, may not be in the “public interest” if extended to an applicant who proposes a new [approach] that will not undermine the policy, served by the rule, that has been adjudged in the public interest. An agency need not sift pleadings and documents to identify such applications, but allegations such as those made by petitioners, stated with clarity and accompanied by supporting data, are not subject to perfunctory treatment, but must be given a “hard look.”²²

JoiPhone respectfully submits that its Petition for Limited Waiver is stated with clarity, and is accompanied by substantial supporting data in documentary form, and is therefore entitled to a “hard look” by the Commission under WAIT Radio.

The WAIT Radio court further suggested that, under certain conditions, grant of limited waivers in special circumstances may fall within the scope of an agency’s “assigned responsibilities.” Specifically, the court stated: “[A]n application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a “safety valve procedure” for consideration of an application for exemption based on special circumstances.”²³

Clearly the provision of E911 service to VOIP subscribers is one such “difficult area.” Because of the technical difficulties and limitations involved in deploying ubiquitous, nationwide E911 services, JoiPhone’s situation is ripe for application of a “safety valve procedure” in order to avert a regulatory situation that actually acts to thwart rather than advance important, fundamental Commission policies. Thus, JoiPhone’s present waiver request presents precisely the type of situation contemplated by the Wait Radio court as eligible for waiver and thus merits a “hard look” by the Commission.

²² WAIT Radio, 418 F. 2d at 1157 (emphasis added).

²³ Id., citing FPC v. Texaco, Inc., 377 U.S. 33, 84 S. Ct. 1105, 12 L. Ed. 2d 112 (1964); United States v. Storer Broadcasting Co., 319 U.S. 190, 63 S. Ct. 997, 87 L. Ed. 1344 (1943); American Airlines v. CAB, 123 U.S. App. D.C. 310, 359 F.2d 624 (en banc), cert. denied, 385 U.S. 843, 87 S. Ct. 73, 17 L.Ed. 2d 75 (1966); Pikes Peak Broadcasting v. FCC, 422 F.2d 671, 682, 137 U.S. App. D.C. 234 (1969); WBEN, Inc. v. United States, 396 F.2d 601, 618 (2.d Cir. 1968), cert. denied, 393 U.S. 914, 89 S. Ct. 240, 21 L. Ed. 2d 200 (1968).

The WAIT Radio court also recognized a strong public interest consideration which weighs in favor of granting limited waiver requests of the type sought herein. The Court observed that “a rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity or more effective implementation of overall policy, considerations that an agency cannot realistically ignore, at least on a continuing basis. The limited safety valve permits a more rigorous adherence to an effective regulation.”²⁴

2. Application of the “Hard Look” Supports Grant of JoiPhone’s Limited Waiver Request.

A Hard Look at JoiPhone’s limited waiver request readily shows that the Commission’s grant thereof is appropriate. Considerations of hardship, equity or more effective implementation of overall policy all apply here. JoiPhone would undergo undue hardship if prevented from marketing its Services nationwide. This would also be inequitable as it would put JoiPhone at a competitive disadvantage to similarly situated interconnected VOIP providers. Finally, provision of JoiPhone’s Service to subscribers as a VOIP alternative would help create a more competitive VOIP marketplace, all consistent with Commission policy.

A few additional points merit elaboration.

First, as discussed above, Intrado’s service -- and therefore JoiPhone’s -- is limited to the list of PSAPs and related Major Market Rollout Schedule as listed in the Compliance Letter.²⁵ As Intrado rolls out its E911 solution, JoiPhone’s E911 coverage will expand proportionately.

Second, a significant complication for JoiPhone in deploying a nationwide VOIP E911 solution, one that is simply not within JoiPhone’s control, is that Intrado is also dependent upon yet another group of third parties, including both incumbent local

²⁴ WAIT Radio, 418 F.2d at 1159.

²⁵ See, JoiPhone’s Compliance Letter attached hereto at Attachment B.

exchange carriers and PSAPs. Based on the record in this proceeding,²⁶ in certain areas, incumbent carriers and PSAPs are apparently declining to enter into (or at least delaying) agreements with VOIP providers. In other instances, some PSAPs do not possess E911 capability and therefore can provide only Basic 911 service (i.e., the PSAP's facilities can only receive the caller's phone number, not the ANI information). Neither Intrado nor JoiPhone have the unilateral ability to resolve these disagreements or deployment issues – without which nationwide E911 coverage is impossible – thus making this request for limited waiver necessary.

Third, as the Commission has previously noted, delays that are beyond the control of a service provider or the inability of a service provider to obtain required products or services despite good faith efforts, provides ample reason for grant of a waiver.²⁷ JoiPhone has clearly made good faith efforts to implement an E911 solution that fully complies with the VOIP E911 Order.²⁸ Nevertheless, for reasons totally outside the control of JoiPhone, it is simply not feasible for JoiPhone to come into complete compliance with the Commission's VOIP E911 requirements on a nationwide basis until such time as Intrado has completed its own nationwide deployment.

3. Grant of a Limited Waiver to JoiPhone is in the Public Interest.

To preclude JoiPhone from offering service until such time as it literally and strictly complies with Commission rule 9.5(b) is not in the public interest. JoiPhone has made good faith efforts to comply with the requirements and has made substantial progress toward nationwide compliance in light of the specific commitments of its Compliance Letter and the terms of its agreement with Intrado, which is referenced in the Compliance Letter. Demanding strict compliance with each such VOIP E911 Order requirement from JoiPhone, at this point in time, would only prevent JoiPhone from providing valuable and needed services to the public and thus from helping to create a

²⁶ See, e.g., Vonage America Inc.'s Petition for Extension of Time and Limited Waiver, WC Docket No. 04-36 and 05-196 (November 28, 2005).

²⁷ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: E911 Phase II Compliance deadlines for Tier III Carriers, CC Docket No. 94-102, Order, FCC 05-79 (rel. April 1, 2005) ("Wireless E911 Tier III Second Waiver Order") at para. 10.

²⁸ See, Compliance Letter (describing JoiPhone and Intrado's respective efforts to secure compliance with the E911 Rules).

robust, competitive VOIP market, a result that would be in contravention of long-established pro-competitive Commission policies. In addition to the steps that it has already taken to implement the requirements of the VOIP E911 Order, JoiPhone has taken steps to achieve full nationwide compliance within a reasonable period of time. Grant of this Petition will give JoiPhone the time to carry out its plans for nationwide compliance as set forth in the concurrently filed Compliance Letter. As explained therein, JoiPhone has contracted with Intrado to provide an E911 solution to JoiPhone.

4. Grant of JoiPhone's Petition Will Not Undermine the Policy Objectives of the VOIP E911 Order and is Supported by Precedent.

There is ample legal precedent for grant of a limited waiver in the instant circumstance.

For instance, in the USTA Accounting Waiver Order,²⁹ the Commission had ordered various incumbent local exchange carriers ("ILECs") to record revenues from their non-regulated payphone operations in a non-regulated cost accounting pool.³⁰ USTA sought – and the Commission subsequently granted – a limited waiver of this accounting requirement, in relevant part because the initial Commission accounting rule had created a competitive imbalance that discriminated against the ILECs in their capacity as competitive payphone providers.³¹

JoiPhone respectfully submits that without grant of the instant waiver, it would be subject to a similar competitive imbalance. Other providers of VOIP services (e.g., cable providers) would be able to provide such services while "nomadic" VOIP providers – at least for now – would not. This imbalance, at least in the case of JoiPhone, can be readily cured by grant of this Petition.

²⁹ In the Matter of United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules, 13 FCC Rcd 214, AAD 97-103 (rel. December 31, 1997) ("USTA Accounting Waiver Order").

³⁰ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Payphone Reconsideration Order"), aff'd in part and remanded in part, sub nom., Illinois Public Telecommunications Assn. v. FCC and United States, 117 F.3d 555 (D.C. Cir. 1997).

³¹ USTA Accounting Waiver Order at para. 6.

Furthermore, JoiPhone is working with Intrado to implement a nationwide E911 solution that fully meets the Commission's E911 Rules. Granting this Petition will not undermine the policy goal that subscribers of interconnected VOIP service providers have access to emergency services. Nor is JoiPhone requesting a permanent exemption from or an indefinite waiver of the Commission's rules. Rather, JoiPhone is merely seeking a limited waiver to meet some of the Commission's requirements via different means because of the realities of the current marketplace until such time as Intrado is able to implement a nationwide solution based upon approved national standards and reasonable cooperation among all industry participants.

Again, the USTA Accounting Waiver Order provides additional precedent for this waiver request. In that Order, the Commission granted USTA's request for a waiver in large part because it found that attainment of the Commission's goals that gave rise to the initial accounting requirement would not be adversely affected by grant of the waiver sought by the affected ILECs.³²

Similarly, JoiPhone's implementation of the Commission's VOIP E911 requirements through employment of a third party's extensive facilities, resources and services, with the limited waiver permitting JoiPhone to market VOIP services where full compliance with Commission rule 9.5(b) is temporarily not feasible will not affect the Commission's ability to ensure adequate E911 capability to JoiPhone's VOIP customers.

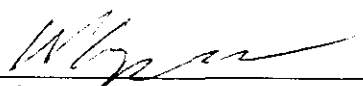
V. CONCLUSION

Under the circumstances proposed by JoiPhone herein and within its concurrently filed Compliance Letter, grant of the conditional, limited waiver requested herein would not undermine any of the Commission's VOIP E911 public interest goals, and would in fact result only in more service options for United States consumers and more robust competition in telecommunications markets nationwide, all in full accord with long-established, fundamental Commission policy goals. Accordingly, to the extent the

³² USTA Accounting Waiver Order at para. 4.

Commission deems a waiver is required for JoiPhone's Services as described in this Petition, JoiPhone requests that such waiver be granted.

Respectfully submitted,



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d/b/a JoiPhone

November 14, 2006

ATTACHMENT "A"

INTRADO'S COMPLIANCE PACKAGE

INTRADO

FCC Reporting Packet

November 21st, 2005

Overview:

In an effort to continue supporting our customers as they seek to adhere to the Federal Communications Commission's (FCC) reporting requirements, Intrado has prepared the following document that contains key reporting elements and deployment information as requested by the FCC in its Public Notice entitled, *Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters*, WC Docket No. 04-36, WC Docket No. 05-196, released on November 7, 2005 (Public Notice).

The information set forth in this document is intended to supplement the Compliance Reports that VoIP Service Providers (VSPs) are required to file with the FCC by November 28, 2005. The format of the document is in alignment with the Public Notice, in order to facilitate an easier reporting transition for the VSPs. In addition, the actual filing procedures from the Public Notice are provided at the end of this document to further assist our customers.

We recommend that your own attorneys review the individual Compliance Reports prior to their submission to the FCC, as Intrado is supplying information based upon its own interpretation of the Public Notice. Relying strictly on this document will not guarantee compliance with the requirements outlined to VSPs in the Public Notice.

We are more than willing to answer any questions that your company may encounter and please direct them to your respective Account Manager.

****Note:** Please view document in Print Layout and open maps using Adobe Acrobat.

Elements for Compliance Letters

911 Solution:

Public Notice Requires: This description should include quantification, on a percentage basis, of the number of subscribers to whom the provider is able to provide 911 service in compliance with the rules established in the *VoIP 911 Order*. Further, the detailed description of the technical solution should include the following components:

The V9-1-1™ solution enabled by Intrado provides a true E9-1-1 solution for VoIP Service Providers. Intrado enables a comprehensive approach to delivering E9-1-1 for VoIP by handling all aspects of the VoIP 9-1-1 call delivery and VoIP Positioning Center (VPC) functionality such as Master Street Address Guide (MSAG) Address Validation, ESQK management, Geocoding, real-time provisioning and routing determination. Included in the Service for the VSP is also the call delivery component to ensure the 9-1-1 call reaches the appropriate selective router and Public Safety Answering Point (PSAP). Intrado manages the VPC functionality and the Call delivery component on behalf of the VSP thereby enabling a full end to end solution from one service provider.

The only VSP customer requirements for delivery of the V9-1-1 service are the ongoing delivery of address and telephone number information to Intrado via a real-time interface and the connectivity to the Intrado network to enable live 9-1-1 call delivery.

- 911 Routing Information/Connectivity to Wireline E911 Network:

Public Notice Requires: A detailed statement as to whether the provider is transmitting, as specified in Paragraph 42 of the *VoIP 911 Order*, "all 911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority utilizing the Selective Router, the trunk line(s) between the Selective Router and the PSAP, and such other elements of the Wireline E911 Network as are necessary in those areas where Selective Routers are utilized."¹ If the provider is not transmitting all 911 calls to the correct answering point in areas where Selective Routers are utilized, this statement should include a detailed explanation why not. In addition, the provider should quantify the number of Selective Routers to which it has interconnected, directly or indirectly, as of November 28, 2005.

Currently through the assistance of our Network providers, our VSP customers will have access to 154 E9-1-1 Selective Routers by November 28th, 2005 and the attached Major Market Deployment Map and the VoIP Deployment Plan reflects the major market deployment schedules. Note: the market deployment map represent major markets where Intrado has connectivity to at least 1 selective router, ALI steering and the ability to populate ALI.

- Transmission of ANI and Registered Location Information:

Public Notice Requires: A detailed statement as to whether the provider is transmitting via the Wireline E911 Network the 911 caller's ANI and Registered Location to all answering points that are capable of receiving and processing this

¹ *VoIP 911 Order*, 20 FCC Rcd at 10269-70, ¶ 42 (footnote omitted).

information. This information should include: (i) a quantification, on a percentage basis, of how many answering points within the provider's service area are capable of receiving and processing ANI and Registered Location information that the provider transmits; (ii) a quantification of the number of subscribers, on a percentage basis, whose ANI and Registered Location are being transmitted to answering points that are capable of receiving and processing this information; and (iii) if the provider is not transmitting the 911 caller's ANI and Registered Location to all answering points that are capable of receiving and processing this information, a detailed explanation why not.

- **Basic PSAP:** Currently 93% of the US population is served by PSAPs operating off an E9-1-1 Selective Router. To illustrate PSAPs within the US, which are not served by a Selective Router, the enclosed "Basic PSAP" map could be used as reference information. **While these areas are not included within the FCC Order and are not required for compliance,** Intrado is actively contacting these areas to determine technical options for VoIP E9-1-1 native call delivery. **Reporting this information is not required by the FCC.**
- **ANI Only:** There are unique deployment circumstances in areas of the US and Puerto Rico that operate off E9-1-1 Selective Routers, but will not meet the full FCC mandate. This information should be considered as part of the compliance report to the Commission. Intrado is currently aware of four (4) States and a Territory within your serving area that will have native Selective Routing functionality but will only provide Automatic Number Identification (ANI) only service to the PSAP. The following information explains the circumstances within these areas:

New Jersey - In the State of New Jersey Intrado has gained permission from the State to deploy a voice only service which includes the call taker receiving ANI on the VoIP 911 caller. The State ALI system is not capable of full dynamic ALI updates and will require an upgrade. New Jersey represents 3% of the total US population.

Ohio - To date, Ohio has not granted permission to Intrado to deploy a voice only solution. The State ALI system is not capable of full dynamic ALI update. Ohio represents 4% of the total US population.

Hawaii - To date, Hawaii has not granted permission to Intrado to deploy a voice only solution. The ALI systems are not capable of full dynamic ALI update. Hawaii represents 5% of the total US population.

Puerto Rico - To date, Puerto Rico has not granted permission to Intrado to deploy a voice only solution. The ALI systems are not capable of full dynamic ALI update. Puerto Rico represents 3% of the total US population.

- **VSP Specific Metrics:** Please see enclosed VSP coverage Spreadsheet.

○ 911 Coverage:

Public Notice Requires: To the extent a provider has not achieved full 911 compliance with the requirements of the *VoIP 911 Order* in all areas of the country by November 28, 2005, the provider should: 1) describe in detail, either in narrative form, or by map, the areas of the country, on a MSA basis, where it is in full compliance and those in which it is not; and 2) describe in detail its plans for coming into full compliance with the requirements of the order, including its anticipated timeframe for such compliance.

- **Deployment Overview** – Intrado, as your VPC is working on nationwide native VoIP E9-1-1 delivery in accordance with the Commission Order. The initial PSAP deployments are targeted in major metropolitan areas throughout the US based on the VSP customer subscriber base priorities. The attached "Major Market Deployment Map", which corresponds with MSAs, identifies regions within your territory that have connectivity to at least one Selective Router, ALI steering capabilities; ANI and the ability to populate ALI. These areas are planned for deployments by November 28, 2005; March 31, 2006 and June 30, 2006. This map could be used to demonstrate FCC compliance for the November 28th requirements and the future deployment strategy.

Obtaining Initial Registered Location Information:

Public Notice Requires: A detailed description of all actions the provider has taken to obtain each existing subscriber's current Registered Location and each new subscriber's initial Registered Location. This information should include, but is not limited to, relevant dates and methods of contact with subscribers and a quantification, on a percentage basis, of the number of subscribers from whom the provider has obtained the Registered Location.

This information should be completed by the VoIP Service Providers. As a component of the V9-1-1 Service the VSP has access to the Intrado Validation and Update Interface (VUI) which enables near real-time delivery of the VSP acquired or VSP User submitted address update information. VSPs may integrate VUI into their existing provisioning systems to ensure seamless delivery of acquired registered location information to the Intrado systems.

Obtaining Updated Registered Location Information:

Public Notice Requirements: A detailed description of the method(s) the provider has offered its subscribers to update their Registered Locations. This information should include a statement as to whether the provider is offering its subscribers at least one option for updating their Registered Location that permits them to use the same equipment that they use to access their interconnected VoIP service.

The V9-1-1™ Mobility Services provides Intrado Customers with a real-time provisioning interface to provision/register subscriber (location) data to Intrado to ensure the proper address and call back number is delivered to the appropriate PSAP at the time of a VoIP 9-1-1 call. This interface is named the Validation and Update Interface (VUI). Intrado's real-time provisioning process enabled by VUI includes a geocoding process as well as management of Master Street Address Guide (MSAG) validation at the time of provisioning. Customers can utilize a VSP provided web portal or a VSP provided service center by phone to enable the near real-time update to Intrado.

At the time of the VoIP 9-1-1 call Intrado uses the VSP customer's provisioned information to associate the latitude and longitude assigned during provisioning with the wireline PSAP boundaries maintained by Intrado to determine appropriate PSAP for delivery of the MSAG Valid address and Call Back Number of the user.

Intrado also enables a VSP to utilize the Intrado Level of Service (LoS) query integrated into the VUI application. This functionality enables a real-time query to Intrado with an address of a customer/end user for the purpose of determining the level of E9-1-1 service available to that customer based on their location. Intrado will return a set of responses (Enhanced, Basic, etc.) that will enable the user to determine E9-1-1 service level and take appropriate action.

Technical Solution for Nomadic Subscribers:

Public Notice Requirements: A detailed description of any technical solutions the provider is implementing or has implemented to ensure that subscribers have access to 911 service whenever they use their service nomadically.

VSPs utilizing Intrado's V9-1-1™ Mobility Services are able to route VoIP emergency calls from their VoIP network to the Intrado Network or alternative 3rd party network for delivery to the appropriate Selective Router and then on to the geographically appropriate Public Safety Answering Point (PSAP) via the native 9-1-1 infrastructure. The Services utilized provide a "native" 9-1-1 solution for routing VoIP 9-1-1 calls from both in-region and out-of-region telephone numbers (TNs) to the most geographically appropriate PSAP. The V9-1-1 solution enables full support of nomadic usage of VoIP provided the user updates their address information upon arrival into a new location. Through the Validation and Update Interface (VUI) the V9-1-1 solution will enable the near real-time provisioning (Geocoding and MSAG Validation) of the newly provisioned address and make available (assuming no errors) that user's information for delivery to the PSAP within 15 minutes of receipt.

Intrado recognizes the need for removing the user interaction and self provisioning component of the solution. To that end, Intrado is actively working and trialing a number of location determination technologies, which will be supported by Intrado and the Intrado provisioning interface.

Filing Procedures

Interconnected VoIP providers must file the above-referenced Compliance Letters in this proceeding on or before November 28, 2005. All such filings must reference WC Docket No. 05-196 and should be labeled clearly on the first page as "Compliance Letter." Compliance Letters may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (May 1, 1998).

- **Electronic Filers:** Compliance Letters may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number (WC Docket No. 05-196).
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

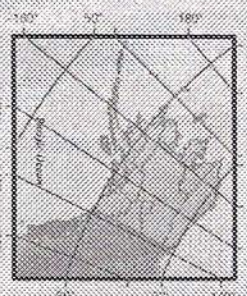
Parties should also send a copy of their filings to:

- Kathy Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 7-C802, 445 12th Street, SW, Washington, D.C. 20554, or by email to kathy.berthot@fcc.gov; and
- Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, SW, Washington, D.C. 20554, or by e-mail to janice.myles@fcc.gov.

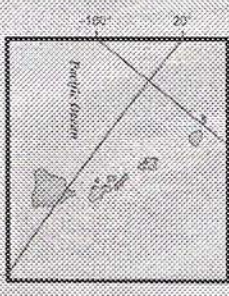
Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

For further information regarding this notice, press should contact Janice Wise, Director, Media Relations, Enforcement Bureau, (202) 418-8165, and providers should contact Kathy Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, (202) 418-7454.

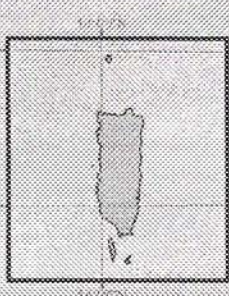
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Hawaii

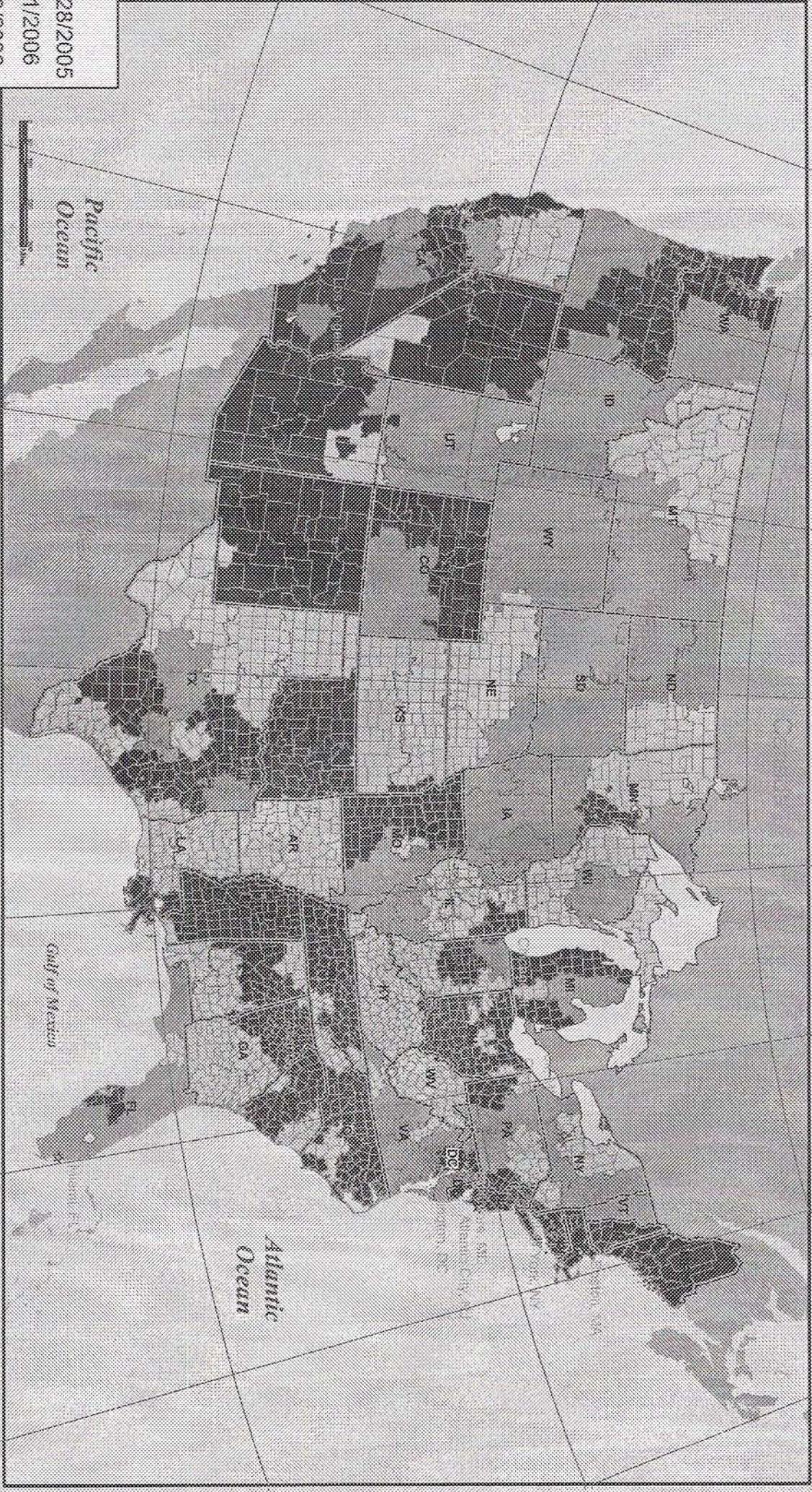


Puerto Rico



Legend

- Planned for 1/1/28/2005
- Planned for 3/3/1/2006
- Planned for 6/30/2006
- County Boundary
- Top 20 MSAs
- Lakes

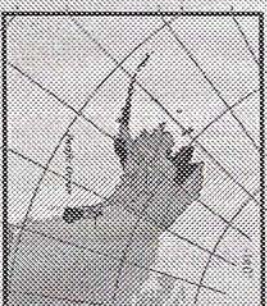


Intrado Major Market Rollout Schedule

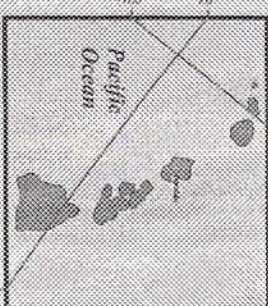
intrado

informed Response
 Intrado
 WDS GIS Operations Team
 Date: November 2005
 Data Source: Mendenhall, Google, PPS, ESRI Data
 Created in ArcGIS 8 using ArcMap

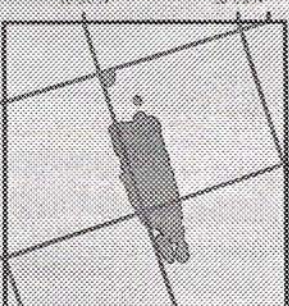
Alaska



Hawaii



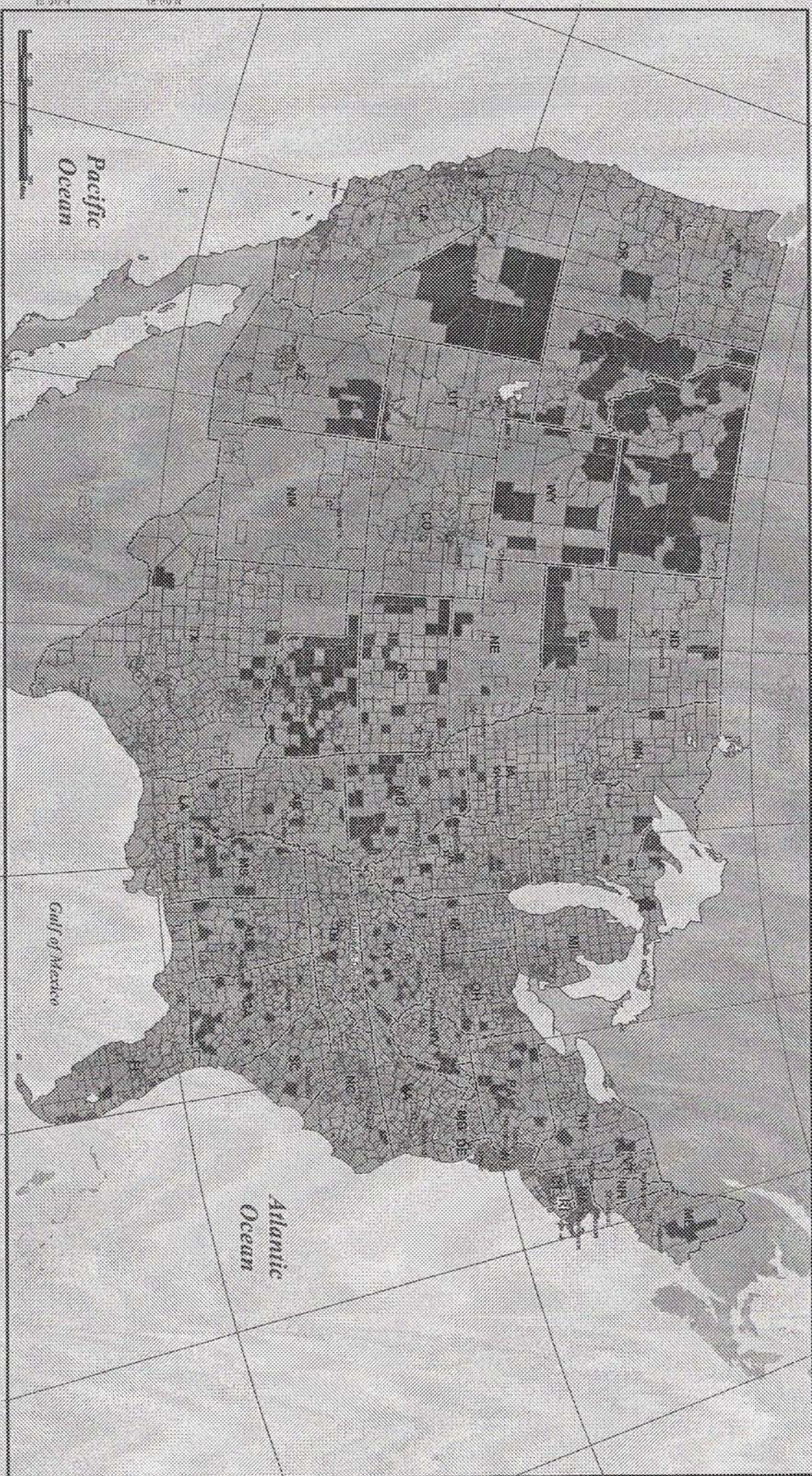
Puerto Rico



Legend

- Basic PSAPs
- Other PSAPs
- Capital Cities
- Lakes

Basic PSAPs



Atmos Projection

inirado

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